United Nations A/HRC/25/NGO/8

General Assembly

Distr.: General
19 February 2014

English only

Human Rights Council
Twenty-fifth session
Agenda item 3
Promotion and protection of all human rights, civil political, economic, social and cultural rights, including the right to development

Written statement* submitted by Human Rights Advocates Inc., a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[13 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The right to vote: Interference by voter registration laws

I. Introduction

Voting allows citizens to hold leaders accountable and promote good governance. The right to vote is a basic human right that empowers citizens to influence governmental decision-making and to safeguard their own human rights. Several international declarations and covenants provide for the right to vote; however, the importance of this right requires more monitoring and further definition of its contour. The Human Rights Council recently adopted Resolution 19/36 on "Human Rights, democracy, and the rule of law,"[1] which reaffirms the right of every citizen to vote and calls on states to make continuous efforts to strengthen the rule of law[2] and promote democracy by "[t]aking appropriate measures and steps to amend electoral laws in order to enable people to vote and participate in elections, without unreasonable restrictions."[3] This landmark Resolution by the Council is a positive step for strengthening protections of every citizen's right to vote. However, states continue to interfere with this right by enacting electoral legislation, particularly laws governing voter registration, that are neither reasonable nor proportional.

II. Interference by Law: Registration of Voters

Though the right to vote is enshrined in various international covenants and declarations, it is not absolute and can be subject to reasonable restrictions. Article 25 of the International Covenant on Civil and Political Rights (ICCPR) provides that citizens shall have the right to vote without "unreasonable restrictions," which include only those restrictions that are "reasonable" and "proportional." Human Rights Committee General Comment No. 25 to the ICCPR provides that any conditions that apply to the exercise of the right guaranteed by Article 25 should be based on "objective and reasonable criteria."[4] For example, setting a minimum age limit for voting purposes would be a reasonable restriction.[5] Alternatively, an unreasonable restriction is one based on grounds of physical disability or one that imposes literacy, educational, or property requirements.[6] Regarding the principle of "proportionality," the Human Rights Committee concluded that this principle requires that a measure as harsh as the derivation of all political rights must be specifically justified.[7]

Despite these requirements, there is wide derogation by states in protecting the right to vote as states often interfere with this right through electoral legislation, especially laws governing voter registration that are neither reasonable nor proportional. Voters can be directly disenfranchised through laws denying the right to certain demographic groups, such as convicted prisoners, or through procedural requirements, such as voter identification laws that disparately impact certain communities, in particular minorities. This is especially prevalent in voter registration laws that have voter identification requirements, prisoner disenfranchisement, and language barriers.

A. Voter Identification (ID) Requirements

International law provides some guidance on the role and process of voter registration; however, states are afforded wide discretion in the implementation of voter identification practices.[8] Discrepancies in voter ID laws across

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[1] Resolution 19/36, "Human Rights, democracy, and the rule of law," A/HRC/RES/19/36 (April 19, 2012), *available at* http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/19/36.

[2] Resolution 19/36, para. 2.

[3] Resolution 19/36, para. 16(h).

[4] Human Rights Committee, "General Comment No. 25," OHCHR (July 12, 1996), para. 4, *available at http://www.unhchr.ch/tbs/doc.nsf/0/d0b7f023e8d6d9898025651e004bc0eb.*

[5] Id., para. 10.

[6] Id.

[7] Human Rights Committee, "Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the ICCPR," Communication No. 44/1979, CCPR/C/12/D/44/1979 (April 9, 1981), para. 16.

[8] "Voter Identification Requirements and Public International Law: An Examination of Africa and Latin America," The Carter Center (January 14, 2013), 1, *available at*

countries vary depending on numerous factors, including politics, government capacity, environment, culture, history of conflict, and levels of poverty. Because voter ID laws significantly impact the ability to register to vote and cast a ballot, laws governing proof of identity can be helpful to facilitate and increase confidence in the voting process. However, voter ID laws too often cause substantial disenfranchisement of certain communities.[9]

The United States (U.S.) presents an example of violations of the international obligation ensuring every citizen the right to vote. Voter ID laws in the U.S. have a disproportionate and unfair impact on approximately 21 million Americans, a significant number of whom are low-income, racial and ethnic minorities, and elderly.[10] Many of these Americans cannot obtain necessary forms of identification required by states because they cannot afford to pay for the required documents or have limited physical mobility to obtain an ID due to old age.[11] In Africa, voter ID laws vary amongst different countries. While most require individuals to provide proof of identity to register and vote, some countries allow for either one of many types of identity documents or third party attestation, where an applicant may rely on witness testimony or affirmation of a traditional leader as proof of identity.[12] In Latin America, all countries require a national ID card for voting. The single ID system works well in those countries whose governments commit substantial resources to ensuring citizens have documentation or other outreach measures. However, many citizens in South and Central American lack documentation entirely, including birth certificates, the majority of whom are indigenous, poor, rural, youth, and are displaced due to armed conflict. Millions of undocumented citizens in Latin America cannot even start the process of registering to vote.[13]

B. Prisoner Disenfranchisement

Legislation prohibiting prisoners from voting and thus disenfranchising individuals convicted of crimes is a prevalent form of direct interference by law in guaranteeing the right to vote. The Human Rights Committee has stated that "[i]f conviction for an offense is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence."[14] The U.S., Belgium, Finland, Germany, and Iceland have disenfranchisement laws that vary depending on specific factors, such as the felon's state of residence or the type of crime committed.[15]

The U.S. has some of the most restrictive electoral policies at the subnational level. Each state in the U.S. has its own criminal disenfranchisement laws which vary widely from state to state. For example, while two states permit incarcerated felons to vote, 13 states prohibit only current inmates from voting, and 30 states prohibit prisoners released on probation from voting.[16] However, 11 states permanently disenfranchise former prisoners on parole, probation, and post-sentence.[17] Four other countries, Armenia, Belgium, Chile, and Finland, also place restrictions on felons subsequent to their release.[18] In comparison, 21 countries represent positive examples in eliminating blanket

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https://www.cartercenter.org/resources/pdfs/peace/democracy/des/voter-identification-requirements.pdf (hereafter Carter Center Report).

[9] Id., 10.

[10] "Oppose Voter ID Legislation," American Civil Liberties Union, *available at* https://www.aclu.org/files/assets/aclu_factsheet_on_voter_id_legislation_7_2011.pdf (accessed on January 29, 2014).

[11] Id.

[12] Including Angola, Benin, Chad, Democratic Republic of Congo, Ethiopia, the Gambia, Ghana, Guinea, Lesotho, Liberia, Malawi, Mozambique, Namibia, Niger, and Sudan. Carter Center Report, 15.

[13] Id., 23.

[14] General Comment No. 25, para. 14.

[15] "International Comparison of Felon Voting Laws," Felon Voting, *available at* http://felonvoting.procon.org/view.resource.php?resourceID=289 (accessed on February 4, 2014) (hereafter International Felon Voting Laws).

[16] Id.

[17] Jean Chung, *Felony Disenfranchisement: A Primer*, The Sentencing Project, (June 2013), 1, *available at* http://www.sentencingproject.org/doc/publications/fd_Felony%20Disenfranchisement%20Primer.pdf.

[18] International Felon Voting Laws.

disenfranchisement of prisoners.[19] For example, the Supreme Court in Canada and the Constitutional Court of South Africa both found that blanket disenfranchisement of prisoners violates democratic principles and both countries now allow convicted persons to vote even while in prison, with some limits that are proportional.[20]

C. Language Barriers

Language barriers can affect voter participation because language minorities are less able to navigate the voter registration process. In the U.S., federal law targets language minorities suffering from a history of political exclusion and mandates states to provide election-related materials in English and in minority languages.[21] Though some U.S. states have failed to uphold such obligations at the subnational level, the U.S. at the federal level made positive steps by issuing guidelines for individual states on effectively implementing federal law regarding language minority groups.[22]

The experience in the country of Georgia illustrates another positive example. Following the introduction of specific initiatives to produce voting resources in national minority languages, studies show that members of minority communities have increased understanding of the electoral process.[23]

III. Recommendations

The right to vote is a fundamental human right, crucial to protecting and promoting access to other human rights. Violations of this right have a particularly adverse impact on human rights defenders. Human Rights Advocates (HRA) urges the Human Rights Council to create a separate mandate regarding the right to vote, including a Special Rapporteur to monitor whether state parties' electoral legislation is reasonable and proportional, and to address effective mechanisms for challenging voter disenfranchisement.

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[19] Id.

[20] *Sauvé v. Canada* (Chief Electoral Officer), 2002 SCC 68; *Minister of Home Affairs v. National Institute for Crime Prevention & the Re-Integration of Offenders (NICRO)*, 2004 (5) BCLR 445 (CC) (S. Afr.).

[21] This includes Spanish, Asian, Native American, and Alaskan Native. 28 CFR Part 55.6, Voting Rights Act of 1965, amended in 1975.

[22] "Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups," 28 CFR Part 55, Department of Justice, Federal Register Vol. 76, No. 169 (August 11, 2011), *available at* http://www.justice.gov/crt/about/vot/sec_203/28cfr55_2011.pdf.

[23] Georgia Extraordinary Presidential Election OSCE/ODIHR Election Observation Mission Report, 15, OSCE, (February 28, 2004) *available at* http://www.osce.org/odihr/elections/georgia/24600.